

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

TESSENDERLO KERLEY, INC., a
Delaware corporation,
Plaintiff,

v.

D & M CHEM, INC., a Washington
State corporation,
Defendant.

:
: **Case No. 6:13-mc-00055-AA**
:
:

: **STIPULATION OF WITHDRAWAL**
: **OF SUBPOENA AND RESPONSIVE**
: **MOTION FOR PROTECTIVE**
: **ORDER**
:
:
:

The parties being in agreement, and the Court being duly and sufficiently advised,
IT IS HEREBY STIPULATED, ORDERED, AND ADJUDGED that:

1. Defendant D & M Chem served a subpoena in December 2012 on third party OR-CAL, Inc. ("OR-CAL") in this district. The subpoena was served in connection with a lawsuit pending in Washington State federal court, *Tessenderlo Kerley, Inc. v. D & M Chem, Inc.*, Case No. 2:11-cv-03112-LRS (E.D. Wash.) (the "Washington State Litigation").

2. On February 28, 2013, plaintiff Tessenderlo Kerley, Inc. ("TKI") filed a motion for protective order in this Court to block OR-CAL from producing certain documents. D & M Chem has opposed this motion.

3. On March 29, 2013, TKI and D & M Chem filed a stipulation resolving the Washington State Litigation. See Ex. A hereto.

4. Additionally, on March 29, 2013, D & M Chem sent a letter to OR-CAL's counsel informing him that, in light of the resolution of the Washington State Litigation, D & M Chem withdraws its subpoena to OR-CAL. See Ex. B hereto.

5. Based on the foregoing, TKI hereby withdraws the motion for protective filed in this Court on February 28, 2013.

6. The parties agree that the action in this Court should be dismissed with prejudice, each party to bear its own attorneys' fees and costs.

Dated: April 1, 2013

SO STIPULATED:

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/s/ Patrick A. Lynd
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Attorneys for Defendant
D & M CHEM, INC.

SO ORDERED:

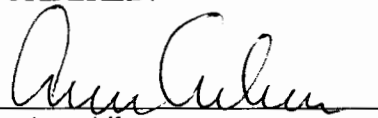

Hon. Ann Aiken
United States District Judge

EXHIBIT A

Case 2:11-cv-03112-LRS Document 118 Filed 03/29/13

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON**

TESSENDERLO KERLEY, INC., a
Delaware corporation,

Plaintiff,

v.

D & M CHEM, Inc., a Washington
corporation,

Defendant.

Case No. 2:11-cv-03112-LRS

**STIPULATED MOTION AND
ORDER OF DISMISSAL**

The parties being in agreement, and the Court being duly and sufficiently advised;

IT IS HEREBY STIPULATED, ORDERED AND ADJUDGED that:

1. The Claim Construction Order (Docket Item 116) is FINAL as to all claim constructions therein including but not limited to the Court's claim constructions for the claim terms "[particles as applied] allow for the exchange of gases on the surface of said crop" (U.S. Patent No. 6,110,867) and "[said membrane] allows for the exchange of gases on the surface of said substrate" (U.S. Patent No. 6,464,995).

2. All Claims of Plaintiff Tessenderlo Kerley, Inc. as set forth in the Complaint (Docket Item 1) be, and hereby are, DISMISSED with prejudice as to Defendant D & M Chem, Inc., and its directors, officers, employees, attorneys, insurers, successors and assigns, subsidiaries, affiliates, divisions, parent companies, and related corporate entities;

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3. All Counterclaims of Defendants/Counterclaimants D & M Chem, Inc. as set forth in its Answer and counterclaims (Docket Item 35) be, and hereby are, DISMISSED with prejudice as to Counterclaim Defendant Tessenderlo Kerley, Inc., and its directors, officers, employees, attorneys, insurers, successors and assigns, subsidiaries, affiliates, divisions, parent companies, and related corporate entities; and

4. Each party to bear its own attorneys' fees and costs.

Dated this 29th day of March, 2013.

SO STIPULATED:¹

s/ Edward F. Shea, Jr.

Edward F. Shea, Jr. (WSBA #23704)
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SHEA & ELLERD, LLP
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s/ Seth A. Watkins

Seth A. Watkins (admitted *pro hac vice*)
Timothy C. Bickham (admitted *pro hac vice*)
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***Counsel for Plaintiff/Counterclaim
Defendant Tessenderlo Kerley, Inc.***

s/ Shannon M. Jost

Justo G. Gonzalez (WSBA #39127)
Brendan V. Monahan (WSBA #22315)
Shannon M. Jost (WSBA #32511)
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(509) 853-3000

***Counsel for Defendant/Counterclaim
Plaintiff D & M Chem, Inc.***

SO ORDERED.

Hon. Lonny R. Suko
United States District Judge

¹ On March 29, 2013, Edward F. Shea, Jr. and Shannon M. Jost each authorized the filing of this pleading with his and her electronic signature, respectively.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2013 (Pacific time), I caused the foregoing **STIPULATED MOTION AND ORDER OF DISMISSAL** to be filed with the clerk of court for the United States District Court for the Eastern District of Washington using the electronic case filing system of the court, which in turn served the following attorneys of record for the defendant:

Justo G. Gonzalez
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Bradford J. Axel
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Brendan V. Monahan
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Attorneys for Defendant D & M Chem, Inc.

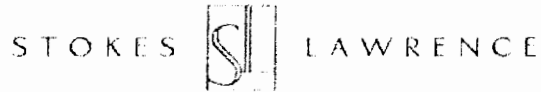
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

s/ Seth A. Watkins

STIPULATED MOTION AND ORDER OF DISMISSAL

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1330 Connecticut Ave., NW
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EXHIBIT B



Shannon M. Jost
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March 29, 2013

VIA E-MAIL AND U.S. MAIL.

William G. Wheatley
Jaqua & Wheatley LLC
825 E. Park St.
Eugene, OR 97401
bwheatley@jaquawheatley.com

Re: *Tessengerlo Kerley, Inc. v. D&M Chem, Inc.*

Dear Bill:

Please be advised that the parties to the above-referenced litigation have filed a Stipulated Motion and Order of Dismissal. Accordingly, D&M Chem, Inc. hereby withdraws its subpoena for documents to your client, Or-Cal, Inc., issued December 18, 2012. There is no need for any further action by Or-Cal in connection with the subpoena.

TKI's counsel have advised that they will be promptly withdrawing their motion for protective order regarding the subpoena.

Thank you and regards,

STOKES LAWRENCE, P.S.

Shannon M. Jost

cc: All Counsel of Record

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